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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No.: 150629565-5999-01]

RIN 0648-BF15

Fisheries Off West Coast States; Comprehensive Ecosystem-Based Amendment 1; Amendments to the Fishery Management Plans for Coastal Pelagic Species, Pacific Coast Groundfish, U.S. West Coast Highly Migratory Species, and Pacific Coast Salmon

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement Comprehensive Ecosystem-Based Amendment 1 (CEBA 1), which includes amendments to the Pacific Fishery Management Council's (Council's) four fishery management plans (FMPs): the Coastal Pelagic Species (CPS) FMP, the Pacific Coast Groundfish FMP, the FMP for U.S. West Coast Highly Migratory Species (HMS), and the Pacific Coast Salmon FMP. If approved, CEBA 1 would amend the Council's FMPs to bring new ecosystem component species (collectively, "Shared EC Species") into each of those FMPs, and would prohibit directed commercial fisheries for Shared EC Species within the U.S. West Coast Exclusive Economic Zone (EEZ). Implementing regulations for CEBA 1 would define and prohibit directed commercial fishing for Shared EC Species, and would prohibit, with limited exceptions, at-sea processing of Shared EC Species.

DATES: Comments must be received on or before February 9, 2016.

ADDRESSES: You may submit comments on CEBA 1 and this proposed rule, identified by NOAA-NMFS-2015-0123, by any of the following methods:

- Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2015-0123*, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.
- Mail: Submit written comments to William W. Stelle, Jr., Regional Administrator, West Coast Region, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115-0070; Attn: Yvonne deReynier.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.*, name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

Electronic copies of CEBA 1 may be obtained from the Council Web site at *http://www.pcouncil.org*.

FOR FURTHER INFORMATION CONTACT: Yvonne deReynier, 206-526-6129, *Yvonne.deReynier@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Background

Ocean fisheries in the EEZ off Washington, Oregon, and California are managed under the Council's CPS, Groundfish, HMS, and Salmon FMPs. The Council also maintains a Fishery Ecosystem Plan (FEP), which includes an ecosystem initiative process for reviewing fisheries management issues that may affect multiple FMPs and for developing policies and regulations to address those issues under the authority of its FMPs. Under the ecosystem initiative process, the Council has reviewed trophic connections between the West Coast EEZ's unfished forage fish species and the EEZ's predator species managed under the MSA, the Marine Mammal Protection Act, and the Endangered Species Act. Through that review, the Council determined that it wanted to bring a suite of unfished and unmanaged forage fish species into its FMPs as ecosystem component (EC) species, and to prohibit directed fisheries for those species (unless and until science indicates that the stocks could support such fisheries).

The Council has recommended amending its FMPs to include the following species as Shared EC Species: round herring (*Etrumeus teres*) and thread herring (*Opisthonema libertate* and *O. medirastre*); mesopelagic fishes of the families *Myctophidae*, *Bathylagidae*, *Paralepididae*, and *Gonostomatidae*; Pacific sand lance (*Ammodytes hexapterus*); Pacific saury (*Cololabis saira*); silversides (family *Atherinopsidae*); smelts of the family *Osmeridae*; and pelagic squids (families: *Cranchiidae*, *Gonatidae*, *Histioteuthidae*, *Octopoteuthidae*, *Ommastrephidae* except Humboldt squid (*Dosidicus gigas*), *Onychoteuthidae*, and *Thysanoteuthidae*). Under Federal regulations at 50 CFR 600.310(d)(5)(iii,) a species may be included in an FMP as an EC species for: data collection purposes, to inform the understanding of ecosystem considerations related to specification of optimum yield for the associated fishery, to assist in the development of conservation and management measures for the associated fishery, or to address other ecosystem issues. The Council recommended including the suite of

Shared EC Species in its FMPs as EC species to address “other ecosystem issues,” because these species are the broadly used prey of marine mammal, seabird, and fish species in the U.S. West Coast EEZ. The Council also noted that Shared EC Species are among the known prey of fishery management unit species of all four of the Council’s FMPs; therefore, Shared EC Species support predator species’ growth and development and may also be identified as EC species “for ecosystem considerations related to specification of optimum yield for the associated fishery.”

CEBA 1, through its implementing FMP amendments and regulations, would prohibit the future development of fisheries for Shared EC Species within the U.S. West Coast EEZ until the Council has had an adequate opportunity to both assess the scientific information relating to any proposed directed fishery and consider potential impacts to existing fisheries, fishing communities, and the greater marine ecosystem. CEBA 1 includes these FMP amendments: Amendment 15 to the CPS FMP, Amendment 25 to the Pacific Coast Groundfish FMP, Amendment 3 to the FMP for U.S. West Coast HMS, and Amendment 19 to the Pacific Coast Salmon FMP. NMFS published a notice of availability of CEBA 1 in the **Federal Register** (80 FR 76924, December 11, 2015) to notify the public of the availability of the FMP amendments and invite comments. Comments received by the end of the CEBA 1 comment period, whether specifically directed to the FMP amendments or the proposed rule, will be considered and addressed in the preamble to the final rule for this action.

Proposed Regulations

FMPs for EEZ fisheries off the U.S. West Coast are implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) by regulations at 50 CFR 660. This proposed rule would revise 50 CFR 660.1(a,) subpart A, to clarify that the regulations in Part 660 of Title 50 of the Code of Federal Regulations apply to all vessels fishing

within the U.S. West Coast EEZ. This proposed rule would also add new regulations at 50 CFR part 660, subpart B, that: 1) identify Shared EC Species as including the unfished forage species listed earlier in the preamble to this proposed rule; 2) define what is meant by “directed commercial fishing” for Shared EC Species within the U.S. West Coast EEZ; 3) prohibit directed commercial fishing for Shared EC Species; and 4) prohibit at-sea processing of Shared EC Species, except while otherwise lawfully processing groundfish in accordance with 50 CFR part 600, subpart D. Directed commercial fishing for Shared EC Species is proposed to be defined as: any vessel landing Shared EC Species without landing any other species; or any vessel landing Shared EC Species with other species and in amounts more than 10 mt combined weight of all Shared EC Species from any fishing trip, or 30 mt combined weight of all Shared EC Species in any calendar year.

Proposed landings limits are based on historic daily and annual per vessel landings levels of Shared EC Species, and take into account 99 percent of all Shared EC Species daily vessel landings and 97 percent of annual vessel total landings from the 2005-2014 period. This proposed rule also addresses the potential for incidental catch of Shared EC Species within the at-sea whiting sectors of the groundfish trawl fishery by providing an exception to the prohibition on at-sea processing of Shared EC Species when those species are retained and processed in amounts smaller than 1 mt for all Shared EC Species other than squid, and 40 mt for all Shared EC squid species. Over the 2002-2014 period, the highest annual catch of Shared EC Species other than squid, for the combined catcher-processor and mothership whiting fleets was 1.2 mt in 2011. Over the 2006-2014 period, all at-sea processors received fewer than 40 mt of Shared EC squid species, except for one vessel that in one year received 60 mt of Shared EC squid species.

This action is needed to proactively protect unmanaged, unfished forage fish of the U.S. West Coast EEZ, in recognition of the importance of these forage fish to the species managed under the Council's FMPs and to the larger California Current Ecosystem. Shared EC Species have not historically been targeted or processed in EEZ fisheries, and the limits provided in this proposed rule are intended to recognize that low levels of incidental catch of Shared EC Species may continue to occur. This action does not supersede tribal or state fishery management for these species.

Classification

Pursuant to section 304(b)(1)(A) of the MSA, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the CPS FMP, the Pacific Coast Groundfish FMP, the FMP for U.S. West Coast HMS, the Pacific Coast Salmon FMP, and other applicable law, subject to further consideration after public comment.

An environmental assessment (EA) for this action is available on NMFS's Web site at www.westcoast.fisheries.noaa.gov/fisheries/ecosystem/index.html.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, requires agencies to assess the economic impacts of their proposed regulations on small entities. The objective of the RFA is to consider the impacts of a rulemaking on small entities, and the capacity of those affected by regulations to bear the direct and indirect costs of regulation.

An initial regulatory flexibility analysis (IRFA) was prepared, as required by section 603 of the RFA (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the

legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. A summary of the analysis follows, with significant alternatives identified per 603(c).

Small entities include "small businesses," "small organizations," and "small governmental jurisdictions." The SBA has established size standards for all major industry sectors in the U.S. including commercial finfish harvesters (NAICS code 114111), commercial shellfish harvesters (NAICS code 114112), other commercial marine harvesters (NAICS code 114119), for-hire businesses (NAICS code 487210), marinas (NAICS code 713930), seafood dealers/wholesalers (NAICS code 424460), and seafood processors (NAICS code 311710). A business primarily involved in finfish harvesting is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of \$20.5 million for all its affiliated operations worldwide (13 CFR part 121; August 17, 2015). For commercial shellfish harvesters, the other qualifiers apply and the receipts threshold is \$5.5 million. For other commercial marine harvesters, for-hire businesses, and marinas, the other qualifiers apply and the receipts threshold is \$7.5 million. A business primarily involved in seafood processing is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual employment not in excess of 500 employees for all its affiliated operations worldwide. For seafood dealers/wholesalers, the other qualifiers apply and the employment threshold is 100 employees. A small organization is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. Small governmental jurisdictions are governments of cities, counties, towns, townships, villages, school districts, or special districts, with populations less than 50,000.

The Council considered three alternatives for the implementation of this rule. The No Action and the selected/preferred alternatives are not expected to have a significant impact on any small entities. The third alternative was not selected and would likely increase costs for a substantial number of small entities. A summary of each alternative and the economic impacts follows below.

Alternative 1: If it is in conformance with all current Federal requirements, such as the Federal list of authorized fisheries and gear, the No Action alternative could allow a new fishery for Shared EC Species to begin without advance Council action to ensure the fishery's long-term sustainability. Participants in fisheries that currently take Shared EC Species incidentally (CPS and groundfish trawl) could more easily develop new fisheries for Shared EC Species under the No Action alternative than under the selected alternative. However, there have not been substantial historical U.S. West Coast landings of Shared EC Species. Barring notable shifts in composition of resident and transient species in the U.S. West Coast EEZ, it is unlikely that there are any current or future potentially important directed fishing opportunities for Shared EC Species in the EEZ. Alternative 1 is therefore not expected to have direct impacts on small entities.

Alternative 2 (preferred/Selected): The selected (preferred) alternative will not impose any changes in existing fishing behavior and is unlikely to have any effect on West Coast fisheries, either small or large entities, compared to the No Action Alternative. The selected alternative would prohibit the future development of directed commercial fisheries for currently unfished species; recreational fisheries and associated entities are not regulated by this action. The selected alternative is not expected to change fisheries harvest rates, the types of gears used off the U.S. West Coast, fishing seasons, or the geographical location of any fishery. The

selected alternative could have minor, indirect, and positive effects on fishery management practices compared to the No Action Alternative 1 and is expected to have no direct impacts on small entities.

Alternative 3: Alternative 3 would have moderate, indirect and negative effects on coastal pelagic species net, shrimp, bottom trawl, and whiting fisheries and fishery management practices. These four fisheries comprise a substantial number of small entities, many of which likely fish in federal waters and would experience increased costs resulting from increased sorting, recordkeeping and reporting requirements.

Fifty-eight vessels are currently permitted in the Federal CPS limited entry fishery. All of these vessels currently fish off California. Average annual per vessel revenue in 2013 for the West Coast CPS finfish fleet was well below \$20.5 million; therefore, all of these vessels are considered small businesses under the RFA. Approximately 95 vessels participated in the pink shrimp fishery on the West Coast in 2014, all of which would be considered small businesses according to the standards. Because each affected vessel is a small business, this proposed rule has an equal effect on all of these small entities, and therefore will impact a substantial number of these small entities in the same manner.

Currently, the Shorebased IFQ Program is composed of 149 Quota Share permits/accounts, 152 vessel accounts, and 43 first receivers. Many companies participate in multiple sectors of the fishery. After accounting for cross participation, multiple Quota Share account holders, and for affiliation through ownership, NMFS estimates that there are 103 non-tribal entities directly affected by these proposed regulations, 89 of which are considered to be “small” businesses.

The mothership (MS) fishery is currently composed of a single cooperative, the Whiting Mothership Cooperative with six mothership processor permits, and 34 mothership/catcher-vessel (MS/CV) endorsed permits, with three permits each having two catch history assignments. The catcher/processor (C/P) Program is composed of 10 C/P permits owned by three companies that have formed a single cooperative, the Pacific Whiting Conservation Cooperative. These two cooperatives are considered large entities from several perspectives: they have participants that are large entities, cooperative revenues exceed or have exceeded \$20.5 million, combined employment exceeds 500 employees, and co-op members are connected to American Fishing Act permits or co-ops where the NMFS Alaska Region has determined they are all large entities (79 FR 54597, September 12, 2014).

Therefore, 17 large groundfish fishery entities and 242 small entities would be affected by Alternative 3 (the non-preferred alternative): 89 small entities in the trawl fishery, 58 small entities in the CPS fishery, and 95 small entities in the pink shrimp fishery. We expect Alternative 3 would have moderate, indirect and negative effects on coastal pelagic species, shrimp, bottom trawl, and whiting fisheries and fishery management practices; however, these effects cannot be quantified without better data on the costs vessels would incur discarding at sea.

This proposed rule was developed after meaningful collaboration, through the Council process, with the tribal representative on the Council. NMFS is not aware of any Treaty Indian tribe or subsistence fisheries in the EEZ other than those listed in 50 CFR 600.725(v). This action does not supersede or otherwise affect exemptions that exist for Treaty Indian fisheries.

This proposed rule does not contain a collection of information requirement subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA).

List of Subjects in 50 CFR Part 660

Administrative practice and procedure, Fisheries, Fishing.

Dated: December 29, 2015

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 660 is proposed to be amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES

1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*, 16 U.S.C. 773 *et seq.*, and 16 U.S.C. 7001 *et seq.*

2. In § 660.1 revise paragraph (a) to read as follows:

§ 660.1 Purpose and scope.

(a) The regulations in this part govern fishing activity of vessels of the United States that fish or support fishing inside the outer boundary of the EEZ off the states of Washington, Oregon, and California.

* * * * *

3. Add subpart B to read as follows:

Subpart B -- All West Coast EEZ Fisheries

Sec.

660.5 Shared Ecosystem Component Species.

660.6 Prohibitions.

660.5 Shared Ecosystem Component Species.

(a) *General.* The FMPs implemented in this part 660 each contain ecosystem component species specific to each FMP, as well as a group of ecosystem component species shared between all of the FMPs. Ecosystem component species shared between all of the Pacific Fishery Management Council's FMPs, and known collectively as "Shared EC Species," are:

(1) Round herring (*Etrumeus teres*) and thread herring (*Ophisthonema libertate* and *O. medirastre*).

(2) Mesopelagic fishes of the families *Myctophidae*, *Bathylagidae*, *Paralepididae*, and *Gonostomatidae*.

(3) Pacific sand lance (*Ammodytes hexapterus*).

(4) Pacific saury (*Cololabis saira*).

(5) Silversides (family *Atherinopsidae*).

(6) Smelts of the family *Osmeridae*.

(7) Pelagic squids (families: *Cranchiidae*, *Gonatidae*, *Histioteuthidae*, *Octopoteuthidae*, *Ommastrephidae* except Humboldt squid [*Dosidicus gigas*], *Onychoteuthidae*, and *Thysanoteuthidae*).

(b) *Directed Commercial Fishing for Shared EC Species.* For the purposes of this section, "directed commercial fishing" means that a fishing vessel lands Shared EC Species

without landing any species other than Shared EC Species, or lands Shared EC Species with other species and in amounts more than:

- (1) 10 mt combined weight of all Shared EC Species from any fishing trip; or
- (2) 30 mt combined weight of all Shared EC Species in any calendar year.

§ 660.6 Prohibitions.

In addition to the general prohibitions specified in § 600.725 of this chapter, and the other prohibitions specified in this part, it is unlawful for any person to:

(a) *Directed Commercial Fishing.* Engage in directed commercial fishing for Shared EC Species from a vessel engaged in commercial fishing within the EEZ off Washington, Oregon, or California. This prohibition does not apply to:

- (1) Fishing authorized by the Hoh, Makah, or Quileute Indian Tribes, or by the Quinault Indian Nation, or
- (2) Fishing trips conducted entirely within state marine waters.

(b) *At-sea Processing.* At-sea processing of Shared EC Species is prohibited within the EEZ, except while processing groundfish in accordance with Subpart D of this part.

4. In § 660.112, add paragraphs (d)(16) and (e)(10) to read as follows:

§ 660.112 Trawl fishery -- prohibitions.

* * * * *

(d) * * *

(16) Retain and process more than 1 mt of Shared EC Species other than squid species in any calendar year; or, retain and process more than 40 mt of any Shared EC squid species in any calendar year.

(e) * * *

(10) Retain and process more than 1 mt of Shared EC Species other than squid species in any calendar year; or, retain and process more than 40 mt of any Shared EC squid species in any calendar year.

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